IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25348 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUKESHBHAI JAHABHAI KOTAR THRO' BROTHER BHAVESH @ - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Mr Tushar Mehta for Petitioner(s) : 1,
Mr A A Dave, Asstt.GOVERNMENT PLEADER for Respondent(s) : 1, 3,
RULE SERVED BY DS for Respondent(s) : 2,
MR M.IQBAL A SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 07/12/2007

ORAL JUDGMENT

1. By way of this Special Civil Application under Article 226 of the Constitution of India, the

present petitioner has challenged the detention order dated 12.9.2007 passed by the respondent No.2-District Magistrate, Supply Branch, Bhavnagar, in exercise of powers conferred under sub-section(2) of section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short, 'the Act') with a view to prevent the petitioner from black marketing essential commodities and acting in any manner prejudicial to the maintenance of supplies of essential commodities essential to the community.

2. After a thorough checking of the concerned witnesses, the petitioner's firm was found to be indulging in black marketing. FIR being CR No.1-68/2007 was registered with Umrala police station under the provisions of Essential Commodities Act.

3. Heard the learned advocate for the detenu and the learned Addl.Central Government Standing Counsel and the learned AGP for the respondents.

4. It is submitted by Mr Dave, learned AGP that while perusing the record, it seems that the detenu has sent the representation to the District Magistrate only and the same was rejected by the District Magistrate vide communication dated 21.9.2007. The detenu has not forwarded the representation to the State Government as well as to the Central Government.

5. Taking into consideration the ratio laid down by the Apex Court in AIR 1991 SC 1983 and the judgment of this court dated 28.7.1993 delivered in Special Civil Application No.765 & 766 of 1993, duty is cast on the District Magistrate to send the representation to the competent authority for its consideration. However, he has failed to do so.

6. It is an admitted fact that the detenu has made representation dated 18.9.2007 through his advocate for forwarding it to the Central Government as well as the State Government. The District Magistrate ought to have specifically asked to forward the said representation to the State as well

as Central Government and if the representation was not forwarded by the District Magistrate to the State as well as Central Government, it is clear violation of Article 22 (5) of the Constitution of India. Therefore, the impugned order of detention is liable to be quashed and set aside. Consequently, the impugned order of detention is liable to be quashed and set aside.

7. In the result, this Special Civil Application is allowed. The order of detention dated 12.9.2007 passed by the respondent No.2 is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[M.D. SHAH, J.]

msp